

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

JASON MICHAEL MUSSEHL,

Plaintiff,

v.

ORDER

Civil File No. 06-2986 (MJD/JJG)

ST. PAUL POLICE DEPT,
et al.,

Defendant.

Jason Michael Mussehl, pro se.

The above-entitled matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Jeanne J. Graham dated July 19, 2006. The Report and Recommendation recommended that this action be summarily dismissed pursuant to 28 U.S.C. § 1915A and that Plaintiff Jason Michael Mussehl's Application to Proceed Without Prepayment of Fees be denied on the grounds that his Complaint fails to state a claim on which relief can be granted. The Magistrate Judge reasoned that Mussehl failed to state a claim because he failed to name a suitable entity as the defendant.

Mussehl filed objections to the Report and Recommendation and also filed a Motion for Leave to File Amended Complaint naming new defendants.

Pursuant to statute, the Court has conducted a de novo review of the record. 28 U.S.C. § 636(b)(1); Local Rule 72.2(b). The Court concludes that the Report and Recommendation was correct as to Mussehl's original Complaint; however, because Mussehl seeks to cure the deficiencies in his Complaint by filing an amended complaint, the Court will not adopt the Report and Recommendation dismissing the case.

The Court remands this matter to the Magistrate Judge for renewed screening of Mussehl's proposed amended complaint under 28 U.S.C. § 1915A and of his Application to Proceed Without Prepayment of Fees.

Accordingly, based upon the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. The Court will not adopt the Magistrate Judge's Report and Recommendation dated July 19, 2006 [Docket No. 4].
2. This matter is remanded to the Magistrate Judge for further proceedings, including consideration of Plaintiff's Motion for Leave to File Amended Complaint [Docket No. 8] and renewed consideration of Plaintiff's Application to Proceed Without Prepayment of Fees [Docket No. 2].

Dated: November 6, 2006

s / Michael J. Davis
Judge Michael J. Davis
United States District Court